

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of

Closed Captioning and Video Description
of Video Programming

CS Docket No. 95-176

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**REPLY COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The following reply comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Notice of Inquiry* in the above-captioned proceeding.¹ ALTV wishes to respond only briefly with respect to several matters raised in the comments thus far filed in this proceeding.

First, the use of pejorative terms like "censorship" has no place in this proceeding.² ALTV dares say no one is unsympathetic to the needs and frustrations of the hearing and visually impaired among television's viewers. Indeed, as many parties acknowledge, much broadcast programming already is captioned, and the amount of captioned programming is growing. None of

¹FCC 95-484 (released December 4, 1995)[hereinafter cited as *Notice*].

²Some commenters have equated a lack of captioning with censorship.

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this was spawned by government dictate. It has been provided voluntarily. Stations recognize that none of their audience ought be disenfranchised by impairments of hearing or vision. This is not a matter of economics; it is a matter of public service and responsiveness to all elements of a station's community. Many stations have assumed the cost of closed-captioning, for example, regardless of whether it was justified on strictly commercial terms. Often, in fact, it is not. Therefore, when highly-charged terms like censorship are hurled about, it is irksome.

Second, consideration of economic effect on local television stations must be part of the process. Congress made that abundantly and unalterably clear. Any requirements must be assessed not just in terms of their undeniable benefits, but also in terms of their effect on local television stations' ability to provide service to the public. Furthermore, Congress contemplated not just individual exceptions, but broad exemptions. The Commission, therefore, must resist calls to read the exemption provision out of the Act.³

Third, the Commission must assess economic burdens at the station level.⁴ Again, the Congress was express and unambiguous. Congress expressly limited the focus of this inquiry to the individual provider or individual station in the case of local television stations. The Conference Report states (at 64), "When considering such exemptions, the Commission should focus on the individual outlet and not the financial conditions of that outlet's corporate parent, nor on the resources of other business units within the parent's corporate structure." This is particularly appropriate in the case of local television stations, each of which must satisfy its obligation to operate in the public interest and serve the particular needs of its community of license. Therefore, those who would have the FCC look to parent company resources in assessing the degree of

³See, e.g., Comments of the Consumer Action Network, MM Docket No. 95-176 (filed March 15, 1996) at 13 [hereinafter cited as "CAN"].

⁴See Comments of the National Association of the Deaf, MM Docket No. 95-176 (filed March 13, 1996) at 41 [hereinafter cited as "NAD"].

burden on a station ignore this plain command to limit the focus of such inquiries to the individual station itself.

Fourth, the comments erase any doubt that captioning and video description are expensive.⁵ Some cavalierly state that such costs are insignificant in relation to overall production costs. This is myopic. Other variable production costs (*e.g.*, talent, production values, etc.) are expected to enhance the popularity of a show. Thus, such outlays are much more likely to enhance the show's audience and revenue generating ability. Costs for captioning or video description typically would produce no material increase in the revenue generating capability of the program. Thus, the comparison is faulty. Furthermore, production costs *per se* are only part of the issue. From a station perspective, the real issue is whether a program produces revenue in excess of its costs. This would include not only the direct cost of the production, but also the myriad of related operating and other costs, all of which must be covered by the station's sole revenue source -- advertising during the program. Thus, for a station to spend \$300.00 to \$1200.00 per hour to caption all of its local programming would add a new and substantial layer of expense. For only one hour per day of captioning, a station would add an expense item exceeding \$100,000.00 annually.

Fifth, concerns about quality of captioning should not lead the Commission into the role of the nation's spell checker.⁶ May the Commission really set up a renewal standard based on the number of misspelled words and comma splices in closed captions? No station will tolerate shoddy captioning; all will strive to provide the best quality service. However, economic constraints hardly may be imagined or regulated away. They are real, and Congress knew better than to pretend they did not exist. Stations should not be forced to devote resources to maximize captioning quality to

⁵See NAD at 27-28; Comments of the WGBH Educational Foundation, MM Docket No. 95-176 (filed March 15, 1996) at 18-19 [[hereinafter cited as "WGBH"]].

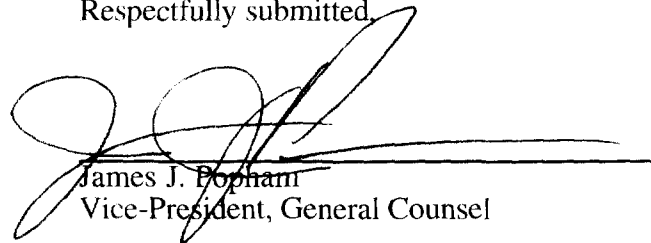
⁶See, *e.g.*, NAD at 16, 19; CAN at 16.

the detriment of other station activities designed to serve the needs of their communities. Judgments as to where station funds might best be directed to optimize the station's service to the public are best made the stations themselves.

Sixth, an expansive and rapidly implemented closed captioning requirement inevitably would curtail stations' programming discretion. Older syndicated shows, for which captioning would be prohibitively expensive, no longer would be shown.⁷ This is a particular danger with respect to programs with regional appeal, but no remaining national draw. Again, programming decisions should not be dictated by whether a program is captioned.

In view of the above, the Commission should adhere to the realistic approach set out in the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James J. Popnam", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

**Association of Local Television
Stations, Inc.**
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036
(202) 887-1970

April 1, 1996

⁷See NAD at 16.